

**ORDINANCE NO. 1947**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE COMPREHENSIVE PLAN LAND USE MAP 7 FROM LAND USE DESIGNATION "RESIDENTIAL HIGH DENSITY" TO "COMMERCIAL" AND AMENDING THE MILWAUKIE ZONING MAP FROM "RESIDENTIAL ZONE R-2" TO "GENERAL COMMERCIAL ZONE CG" FOR THAT AREA BOUNDED BY OAK STREET, EXPRESSWAY 224, MYRTLE STREET, AND CAMPBELL STREET.**

**WHEREAS**, the applicant has requested the City amend the Milwaukie Comprehensive Plan Land Use Map 7 from land use designation "Residential High Density" to "Commercial" and amend the Milwaukie Zoning Map from "Residential Zone R-2" to "General Commercial Zone CG" for that area bounded by Oak Street, Expressway 224, Myrtle Street, and Campbell Street; and

**WHEREAS**, the applicant submitted an application for transportation review including a traffic study and neighborhood through-trip study in accordance with Milwaukie Zoning Ordinance Section 1400; and

**WHEREAS**, public notice of required hearings have been made in accordance with Milwaukie Comprehensive Plan Chapter 2, Milwaukie Zoning Ordinance Section 900 and Oregon Revised Statutes 197.610; and

**WHEREAS**, right-of-way dedication, road and intersection improvements, and neighborhood traffic calming measures have been identified as needed for compliance with requirements for adequate transportation facilities; and

**WHEREAS**, the Planning Commission conducted public hearings on January 11, 2005 and January 25, 2005 in accordance with Milwaukie Comprehensive Plan Chapter 2 and Milwaukie Municipal Code Chapters 19.900 and 19.1000; and on the latter date adopted a recommendation to the City Council in support of the applicant's request subject to conditions that ensure transportation facilities will be adequate at the time of development; and

**WHEREAS**, the City Council conducted a public hearing on February 15, 2005, in accordance with Milwaukie Comprehensive Plan Chapter 2 and Milwaukie Municipal Code Chapters 19.900 and 19.1000; and

**WHEREAS**, the Council finds the proposal to be consistent with applicable criteria of the Milwaukie Comprehensive Plan and Milwaukie Zoning Ordinance as described in Exhibit 1.

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

- Section 1.** The Findings and Conditions in Exhibit 1 are made part of this Ordinance.
- Section 2.** As shown in Exhibit 2, the Milwaukie Comprehensive Plan Map 7 is amended upon satisfactory completion of applicable conditions specified in Exhibit 1.
- Section 3.** As shown in Exhibit 3, the Milwaukie Zoning Map is amended upon satisfactory completion of applicable conditions specified in Exhibit 1.
- Section 4.** The record of Planning Commission proceedings held on January 11, 2005 and January 25, 2005 are incorporated in this ordinance by reference.

Read for the first time on 2/15/05 and moved to a second reading by  
4 - 0 vote of the City Council.

Read for the second time and adopted by the City Council on 2/15/05.

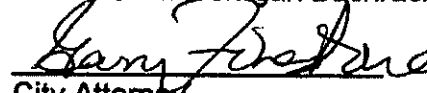
Signed by the Mayor on 2/18/05

  
James Bernard, Mayor

ATTEST

  
Pat Duval, City Recorder

APPROVED AS TO FORM  
Ramis Crew Corrigan Bachrach, LLP

  
City Attorney

**EXHIBIT 1**  
**FINDINGS AND CONDITIONS**

**Part 1. Compliance with Milwaukie Comprehensive Plan Chapter 2.**

Comprehensive Plan amendments require consideration of the following substantive criteria:

*A. The change conforms to the Comprehensive Plan, its goals, policies, and spirit.*

The applicable polices of the Comprehensive Plan include Chapter 1 Citizen Involvement, Chapter 2 Plan Review and Amendment Process, Chapter 4 Land Use, and Chapter 5 Transportation, Public Facilities and Energy. The public review process that the application underwent is consistent with public involvement and plan amendment. The applicant has demonstrated compliance with the Commercial Land Use element of Chapter 4 regarding expanding the existing commercial area by land use change. The Transportation System Plan (TSP), which is implemented through the zoning ordinance provisions governing rezonings and transportation review. Findings of consistency with the Zoning Ordinance support findings for consistency with transportation policies of the Comprehensive Plan and Transportation System Plan.

*B. There is a public need for the change.*

The applicant has conducted a market study that concludes there is a shortage of retail opportunities in the City and that providing additional retail development will serve the public interests in economic development. The Johnson Gardner report made part of the application indicates there is a 10-acre shortage of commercially zoned land within the City. The report further concludes that this shortage results in the loss of tax revenue and jobs to surrounding areas. Other public needs advanced by the proposal include including increasing employment potential in accordance with planned jobs capacity; bringing the site into conformance with the Town Center Plan, which calls for commercial development; and increasing tax base in the present time of fiscal stress.

The land use and zoning changes support parking and auto oriented commercial development appropriate for the location. This type of development is not is not appropriate to the Milwaukie downtown, which is planned for pedestrian oriented storefront uses. Comprehensive Plan Chapter 4 –

Economic Base and Industrial/Commercial Land Use Element acknowledges the need for both types of commercial centers.

- C. *The public need is best satisfied by this particular change.*

Providing additional retail land is consistent with market and community need for the same.

- D. *The change will not adversely affect the health, safety, and welfare of the community.*

The applicant indicates that the proposal will benefit the community welfare by providing needed retail services, increase property values, and local jobs, and that any potential adverse impacts will be mitigated during the review of a development proposal. "Community welfare" has many interlocking components. The loss of existing housing opportunities may not advance community welfare with regards to housing. However, the proposal also creates greater economic attractiveness of the community and convenience to area residents. Community welfare is advanced by increasing employment and economic opportunities, increased tax base, and reducing potential travel times for residents seeking goods and services that are not presently available, but which may become available as part of commercial development of the site.

- E. *The change is in conformance with applicable Statewide Planning Goals.*

Statewide Planning Goals are implemented through comprehensive plans and other plans. The proposed change in land use designation requires consideration of the goals, which are already embodied in city policies. The Statewide Goals do not prescribe "how" cities must plan, but what must be considered in balancing the many and sometimes competing policies of statewide interest that are implemented at the local level. A summary of applicable Statewide Goals follows:

#### Goal 9 Economic Development

Comprehensive plans should be based upon inventories of areas suitable for increased economic growth after taking into consideration the current economic base, availability of public facilities, current market forces, availability of land.

Comprehensive plans must provide for an adequate supply of sites for commercial uses consistent with Plan policies and limit uses on or near commercial sites to those that are compatible with proposed uses.

The proposed land use change and rezoning are consistent with consideration of Goal 9 as the applicant's market study indicates a need for additional commercially zoned land.

## Goal 11 Public Facilities

Cities must plan infrastructure and services to meet the needs of urban development consistent with other comprehensive plan policies. As conditioned, the proposal is consistent with city plans for storm water, sanitary sewer, water, and transportation and existing infrastructure capacities, and makes use of existing investments in these systems.

## Goal 12 Transportation

Safe, convenient, and economic transportation systems are required of cities and counties under this goal, which is implemented through the Transportation Plan Rule (TPR), the Regional Transportation System Plan, and the City's Transportation System Plan. Proposed changes to comprehensive plans must be evaluated for their impact on state transportation facilities, (Expressway 224) for effects of the street network and intersection performance in accordance with the TPR. The proposed comprehensive plan and zoning changes will not result in a significant impact to 224 as follows:

- Required mitigation protects the intersection from exceeding state performance measures over the next 15 years.
- Required mitigation is consistent with future Oak Street improvements already contemplated in the City's Transportation System Plan.
- ODOT concurs with the proposed mitigation and staff's finding of consistency with the Transportation Plan Rule.

- E. *The change is consistent with Metro Urban Growth Management Functional Plan policies and applicable regional policies.*

Functional Plan Title 1 establishes local targets for housing and employment. The site is designated as Subarea 4-2(s) in the Town Center Plan, which calls for increased office and retail opportunities. The Town Center Plan is the basis for Title 1 housing and employment targets. The Plan calls only for employment uses; no Title 1 Housing was allocated to the site. The proposal is consistent with Metro Functional Plan policies for job creation and housing.

## Part 2. Compliance with Milwaukie Zoning Ordinance.

### Zoning Ordinance Criteria for Rezoning

- A. *The proposal must conform to applicable comprehensive plan goals, policies, and objectives, and be consistent with the provisions of city ordinances, Metro Urban Growth Management Functional Plan, and applicable regional policies.*

Compliance with this criterion is demonstrated in Part 1.

- B. *The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The Planning Commission and City Council shall use its discretion to weigh these factors in determining the intent of the proposed zone.*

The proposed commercial development is consistent with the General Commercial Zone. The site is located in a commercial corridor dominated by the Union Pacific Railroad and Expressway 224. Required traffic mitigation has been identified and is incorporated in this ordinance. The land use and zoning changes will likely result in similar changes to the remaining residential block north of Myrtle Street. No comparable sites as well suited for land use conversion to commercial rezoning have been identified. This conclusion is based upon consideration of proximity to major transportation routes, neighborhood impacts, and displacement of valued land uses at alternate locations.

- C. *The proposed amendment will meet or can be determined to reasonably meet applicable regional, state or federal regulations.*

There are no known regional, state or federal regulations that apply to the request other than compliance with the State Transportation Plan Rule discussed elsewhere.

- D. *Existing and or planned public facilities must accommodate site development without significantly restricting potential development within the area.*

The project cannot consume all available capacity of the street system without ensuring capacity for development will be available in the future. The traffic analysis conducted for this review is based upon impacts expected to occur 15 years into the future. Therefore, mitigation improvements provided by the project demonstrates compliance with the criterion. Conditions that ensure compliance with this criterion are made part of this ordinance. There is adequate capacity in water, sewer, and stormwater systems to meet this project and planned development in the area.

- E. *The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.*

The conditions of approval ensure compliance with this criterion. The City' analysis demonstrates the project can be constructed without impairment to adopted performance standards. In addition, the proposed mitigation is

consistent with planned mitigation for Oak Street already within the Milwaukie Transportation System Plan.

- F. *The proposed amendment is consistent with the performance standards of the transportation system.*

The applicant has conducted a traffic impact analysis and neighborhood through-trip study, which were reviewed by the City's traffic consultant and ODOT. See discussion above in Part 1- Goal 12 demonstrating compliance. Part 3 below includes conditions of approval necessary for compliance with the criterion.

### **Part 3. Conditions.**

The following conditions apply to the rezoning of the site, run with the land, are subject to Milwaukie Zoning Ordinance Sections 906, 907, and 908, and may not be modified except by action of the City Council following recommendation by the Planning Commission and the appropriate process for quasi-judicial proceedings under the Milwaukie Zoning Ordinance.

- a. Land uses including "Grocery stores" greater than 27,000 square feet, "fast food drive thru's", and "Convenience Markets, with and without pumps" as defined by the Institute of Transportation Engineers are prohibited to ensure that site generated traffic does not exceed traffic generation estimated for the purpose of demonstrating compliance with intersection performance standards in effect at the time of this approval. This condition is intended to maintain acceptable level of service for the Oak / 224 intersection. If the applicant demonstrates transportation facilities are, or can be made adequate in accordance with city transportation adequacy requirements for the restricted uses above, this condition may be voided by action of the City Council at a public hearing. Modification of this condition is subject to recommendation of the Planning Commission and approval by the City Council.
- b. Sufficient right-of-way from the applicant's site shall be dedicated to accommodate a six lane cross section, thereby allowing construction of a future right turn lane, at westbound Oak onto northbound 224, by the City at the time in the future when it is needed. The City recognizes the need to minimize the right-of-way required to accommodate these improvements. The dedication is estimated to be 20 feet along the south site frontage, and tapering back to the existing right-of-way in the northern portion of the site; this estimate is not prescriptive for determining the actual dedication need. A modification to roadway design criteria may be required and should be allowed to minimize right of way needed along the entire frontage of Oak Street including the existing dental office located on the northwest corner of Oak and Campbell.

The dedication must be made prior to issuance of any building permits for redevelopment of the site.

- c. At the time of development, construction of road improvements shall be provided to accommodate an additional left turn lane from northbound and southbound Oak Street onto 224, resulting in a five lane cross section. Required improvements include signal reconfiguration, pedestrian and other improvements limited to those required to construct the 5 lane cross section to Oak/Washington Street north and south of 224. The concept plans the applicant has submitted (attachment 6 to the staff report) illustrate the 5 lane cross section improvements required to satisfy this condition. This attachment also shows the 6-lane section contemplated by the City. This condition shall be satisfied prior to any occupancy of buildings as part of redevelopment of the site. d. All street improvements done at the time of development shall be designed to accommodate the City of Milwaukie's planned 6 lane cross section for Oak St.
- e. A dedicated right turn lane shall be striped on Oak Street for the movement onto Railroad Ave. A dedicated left turn lane on Railroad Avenue westbound onto Oak shall be striped. This condition shall be satisfied prior to any occupancy of buildings as part of redevelopment of the site.
- f. Specific neighborhood traffic calming improvements shall be determined at the time of development review by the Planning Commission at it's sole discretion to provide the greatest public benefit. As a condition of approval on a specific development proposal, the Planning Commission may accept cash contributions up to \$10,000 in-lieu of developer provided traffic calming for city implementation of traffic calming measures identified by the Planning Commission. Under either scenario, the applicant's responsibility to satisfy this condition shall be limited to a maximum contribution of \$10,000. This condition shall be satisfied prior to any occupancy of buildings as part of redevelopment of the site.

*~ End of Exhibit ~*



Exhibit 2

# Comprehensive Plan Map 7 Amendment



Existing Comprehensive Plan Designation: High Density (HD)  
Amended Comprehensive Plan Designation: Commercial (C)

Adopted by Ordinance of Milwaukie City Council  
on February 15, 2005.

Exhibit 3

# Zoning Map Amendment



Existing Zoning Designation: Residential R-2  
Amended Zoning Designation: General Commercial (CG)

Adopted by Ordinance of Milwaukie City Council  
on February 15, 2005.